



S P I R E L A W

Ian E. Smith
ian@spirelawfirm.com
407.494.0135

Spire Law, LLC
2572 W State Rd 426
Suite 2088
Oviedo, FL 32765

spirelawfirm.com

Via Electronic Filing

November 13, 2024

The Honorable Jessica G. L. Clarke
U.S. District Court, Southern District of New York
500 Pearl St
New York, NY 10007

Re.: *Vuppala v. Land of Buddha, Inc. et al* (1:22-cv-09044)

**Defendant Land of Buddha's Objection to Plaintiff's
Untimely Motion for Extension of Time to File**

Dear Judge Clarke:

Defendant Land of Buddha, Inc. objects to Plaintiff's Letter Motion of November 13, 2024, seeking an extension of the time to file a motion for default judgment against Defendant 7 Mon LLC. [D.E. 103.]

Rule 6(b) of the Federal Rules of Civil Procedure governs the extending of time when an act must be done within a specified time and provides that:

When an act ... must be done within a specified time, the court may, *for good cause*, extend the time ...if a request is made, before the original time or its extension expires; or ...on motion made after the time has expired if the party failed to act because of *excusable neglect*.

On October 22, 2024, the Court ordered that Plaintiff was to file his motion for default against Defendant 7 Mon LLC on or before November 12, 2024. [D.E. 101.] Plaintiff's Letter Motion was filed November 13, 2024, after the Court's deadline. Thus Plaintiff must meet the more stringent excusable-neglect standard.

In evaluating whether a party's reasons for failing to meet a deadline constitute excusable neglect, the Second Circuit applies the four factors set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993): (1) the danger of prejudice [to the opposing party]; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer*, 507 U.S. at 395. The Second Circuit takes a "hard line" in applying the *Pioneer* factors. *In re Westinghouse Elec. Co., LLC*, Case No. 17-10751, 2022 WL 467797, at *7 (Bankr. S.D.N.Y. Feb. 15, 2022).



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Here, Plaintiff has stated only that a “sudden emergency” prompted his untimely request for an extension of the time to file his motion. Plaintiff’s request only marginally addresses the third factor, disregarding the other *Pioneer* factors entirely.

Accordingly, in the absence of Plaintiff demonstrating excusable neglect, the Court should deny Plaintiff’s untimely motion for an extension to file his Motion for Default against 7 Mon LLC.

Respectfully,

Ian E. Smith, Esq.
Partner, Spire Law, LLC

cc: Mr. Ben-Zion Bradley Weitz (via ECF)

